



# STATE OF INDIANA

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December 7, 2015

Ms. Laurie A. Morrison  
432 Melrose Drive  
New Whiteland, Indiana 46184

*Re: Formal Complaint 15-FC-279 & 280: (Consolidated); Alleged Violation of the Access to Public Records Act and the Open Door Law by the Town of New Whiteland Police Department and the Town Council*

Dear Ms. Morrison:

This advisory opinion is in response to your formal complaint alleging the Town of New Whiteland Police Department and the Town Council ("Town") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* and the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et. seq.* The Town has responded via counsel, Mr. J. Lee Robbins, Esq. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on October 19, 2015.

## BACKGROUND

Your complaint dated October 19, 2015, alleges the Town of New Whiteland Police Department violated the Open Door Law. You allege the Town Marshall informed you that you were banned from the Police Department.

Furthermore, you also allege the Department violated the Access to Public Records Act by failing to provide the documents you requested. On October 13, 2015 you requested copies of video recordings taken at the Department. You also requested copies of the Department bylaws and bylaws of the Town. The Town Attorney acknowledged your requests on October 15, 2015.

On November 16, 2015 the Department responded. The Department contends you were never banned from the building, though you are not allowed into every room in the building. Second, the Department contends it has fulfilled your request, it informed you no video recordings exists and while no documents identified as "bylaws" exist, an analogous set of documents are waiting in the Department for you to retrieve them.

## ANALYSIS

The public policy of the APRA states that “a (p)roviding person with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” See Ind. Code § 5-14-3-1. The Town of New Whiteland Police Department and Town Council are public agencies for the purposes of the APRA. *See Ind. Code § 5-14-3-2(n)(1)*. Any person has the right to inspect and copy the Town’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See Ind. Code § 5-14- 3-3(a)*.

It is the intent of the Open Door Law (ODL) the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. *See Ind. Code § 5-14-1.5-1*. Accordingly, except as provided in section 6.1 of the ODL, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them. *See Ind. Code § 5-14-1.5-3(a)*.

You requested two different records, video records and a copy of the Town and Police Department’s bylaws. The Town has stated it does not possess any video records responsive to your request. The APRA does not find a violation by a public agency for failing to provide a record where none exists. Therefore, there is no violation on this count. The Town has also stated your bylaws request was fulfilled via the production of the Town’s employment manual and standard operating procedures and they are waiting for you at the Town Hall. You likely have not retrieved them because you are under the assumption you were banned from the building.

In this case, where a public agency has the records provided and the requestor has not arrived to retrieve the records, a mere phone call or email by the Department would have notified you the records you requested were available. In the interest of providing good customer service, I ask the Department consider reaching out to requestors who have not arrived within a reasonable time to take possession of the documents. While this may place an additional burden on the Department, it would seem to a much lower burden than a potential public access complaint.

The Town contends there was no violation of the Open Door Law because you were never banned from any building. The Open Door Law is concerned with the meetings of governing boards of public agencies. You have not alleged you were entering the Town for any public meeting. Based on the information provided, it does not appear there is any kind of injunction or restraining order from a court prohibiting you from entering the Town Hall to receive your documents. You were informed of their existence on October 15, 2015 and again by this correspondence and it is my sincere hope you are able to retrieve the information you seek.

## CONCLUSION

Based on the forgoing, it is the Opinion of the Public Access Counselor the Town of New Whiteland Police Department has not violated the Access to Public Records Act or the Open Door Law.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long, sweeping underline.

Luke H. Britt  
Public Access Counselor

Cc: Mr. J. Lee Robbins, Esq.